

SENATE BILL 1378

By Kyle

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 26; Title 40; Title 45; Title 47; Title 55; Title
56; Title 62 and Title 66, relative to collateral
recovery.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 62, is amended by adding the following language as a new chapter 12, part 1:

62-12-101. This chapter shall be known and may be cited as the “Collateral Recovery Act.”

62-12-102. As used in this chapter:

(1) “Agency location” means the primary business location of a recovery agency in this state;

(2) “Branch office” means any office of a recovery agency within this state other than the agency location;

(3) “Collateral” means any motor vehicle, boat, recreational vehicle, motor home, motorcycle, farm equipment or vehicle, or industrial equipment or vehicle that is subject to a security agreement;

(4) “Commissioner” means the commissioner of commerce and insurance or the commissioner’s designee;

(5) “Debtor” means any person or entity obligated under a security agreement;

(6) “Department” means the department of commerce and insurance;

(7) “Financial institution” means a bank, industrial loan and thrift company, savings bank, savings and loan association, title pledge lender, or credit union organized

and operating under the laws of this state, any other state, or the United States, and any subsidiary or affiliate;

(8) "Lienholder" means a person holding an interest in, or lien against, any collateral that is subject to a security agreement;

(9) "Person" means an individual, corporation, or other legal entity;

(10) "Personal effects" means any personal property:

(A) Contained within or on repossessed collateral; or

(B) That is not permanently affixed to the collateral and is not the property of the lienholder;

(11) "Recovery agency" means any person conducting business in this state that, for any type of consideration, engages in the business of, accepts employment to furnish, or agrees to provide or actually provides repossession of collateral services;

(12) "Recovery agent":

(A) Means any individual engaging in repossession of collateral; and

(B) Excludes any individual who solely provides clerical or administrative services at the agency location, branch office, or remote storage location;

(13) "Recovery manager" means the individual who is responsible for the operation of a branch office;

(14) "Remote storage location" means a secured storage facility that is not located on the same premises as an agency location or branch office;

(15) "Repossession" means the recovery of collateral subject to a security agreement, which is completed when:

(1) The recovery agency or recovery agent gains entry into the collateral;

(2) The collateral becomes connected to a tow vehicle by a recovery agent; or

(3) The recovery agency or recovery agent has physical control, custody, or possession of the collateral;

(16) “Responsible party” means, with regard to a recovery agency, a sole proprietor, partner in a partnership, director or majority owner of a corporation, member of a member-managed limited liability company, manager or majority owner of a manager-managed limited liability company, director or majority owner of a director-managed limited liability company, or board of governors of a board-managed limited liability company; and

(17) “Security agreement”:

(A) Means an obligation, pledge, mortgage, chattel mortgage, lease agreement, rental agreement, deposit, or lien, any of which is given by a debtor as security for payment or performance of the debtor’s debt by furnishing the creditor with a recourse to be used in case of failure in the principal obligation; and

(B) Includes a bailment where an employer-employee relationship exists or existed between the bailor and the bailee.

62-12-103. The commissioner is authorized to promulgate rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to effectuate this chapter.

62-12-104.

(a) All moneys collected by the department pursuant to this chapter shall be deposited in the state treasury in a separate fund to be known as the collateral recovery administrative fund.

(b) Disbursements from the collateral recovery administrative fund shall be made solely for the purpose of defraying expenses incurred by the department in the implementation and enforcement of this chapter.

(c) No expenses for the implementation and enforcement of this chapter shall be payable from the general fund of the state.

(d) Any part of the collateral recovery administrative fund remaining at the end of a fiscal year shall not revert to the general fund, but shall be carried forward until expended in accordance with this chapter.

62-12-105. Nothing in this chapter prevents local authorities in any municipality, county, or both, by ordinance or resolution, and within the exercise of the police power of the municipality or county, from requiring recovery agencies and recovery agents to register their names and file a copy of any state-issued registration number or license number with the municipality, county, or both.

62-12-106. The department shall make any registration or license issued pursuant to this chapter accessible by electronic search on its web site using existing searchable databases of the department.

62-12-107.

(a) The recovery agency shall confirm with the lienholder of recovered collateral whether the lienholder holds a security interest in the personal effects contained in or on the recovered collateral.

(b)

(1) If personal effects are contained in or on recovered collateral at the time of recovery, then the recovery agency shall completely and accurately inventory the personal effects not covered by a security agreement, and maintain a record of the inventory for a period of two (2) years following the date of repossession.

(2) The recovery agency shall hold all personal effects not covered by a security agreement until the recovery agency either returns the personal effects to the debtor or disposes of the personal effects in accordance with this section.

(c)

(1) Within five (5) business days following the date of repossession, the recovery agency shall give written notification to the debtor of the secured storage location, as described in § 62-12-305(b), of any inventoried personal effects.

(2) At least forty-five (45) days prior to disposing of the personal effects, the recovery agency shall send, by certified mail, notice to the debtor of the intent to dispose of the personal effects.

(3) If the debtor, or the debtor's lawful designee, retrieves the personal effects prior to the date on which the recovery agency is allowed to dispose of the personal effects, the recovery agency shall surrender the personal effects to that individual upon payment of any reasonably incurred expenses for inventory and storage.

(d)

(1) If personal effects are not claimed within forty-five (45) days of the date of the notice of intent to dispose, then the recovery agency may dispose of the personal effects at its discretion.

(2) The recovery agency shall maintain the inventory of the personal effects and the records regarding any disposal of the personal effects for a two-year period from the date of repossession in the agency's permanent records and shall make the records available upon request by the department; provided, any records requested by the department pursuant to this subdivision (d)(2) shall be confidential and not subject to public inspection pursuant to title 10, chapter 7.

(e) Notwithstanding subsections (c) and (d), illegal items or contraband shall not be returned to the debtor, or the debtor's lawful designee, and shall be surrendered to

the local law enforcement agency, and the recovery agency shall retain a receipt or other proof of surrender as part of the agency's inventory and disposal records.

(f) If any monetary gain is realized from the disposition of personal effects pursuant to this section after deducting any inventory, storage, disposition, or other expenses, then the recovery agency shall submit the monetary gain to the treasurer for use in accordance with § 66-29-121.

SECTION 2. Tennessee Code Annotated, Title 62, is amended by adding the following language as a new chapter 12, part 2:

62-12-201.

(a) On or after July 1, 2015, no recovery agency or recovery agent shall provide repossession of collateral services in this state unless the person is registered as a recovery agency or recovery agent with the department.

(b) All registrations expire two (2) years from the date of registration or the renewal of registration.

(c) The commissioner shall establish fees necessary to administer this part, including, but not limited to, fees for registration; renewal of registration; duplicate issuance of registration; and changes in agency location, branch office, and remote storage location addresses.

(d) All fees collected under this part are nonrefundable and shall be deposited into the collateral recovery administrative fund created in § 62-12-104.

(e) No registration shall be transferred to any other person.

62-12-202.

(a) An application for registration or renewal of registration as a recovery agency shall include, at a minimum:

(1) The name under which the recovery agency will operate;

(2) The address of each agency location, branch office, and remote storage location operated by the recovery agency;

(3) The name of the recovery agency's recovery manager; and

(4) An e-mail address for the recovery agency to which the department may send electronic notice with regard to the applicability of licensure requirements pursuant to § 62-12-301, and with regard to the items described in § 4-3-1306(d).

(b) An application for registration or renewal of registration as a recovery agent shall include, at a minimum:

(1) The name of the recovery agent;

(2) The address of each agency location, branch office, and remote storage location where the recovery agent will be employed;

(3) The name of the recovery agent's supervisor, if applicable; and

(4) An e-mail address for the recovery agent to which the department may send electronic notice with regard to the applicability of licensure requirements pursuant to § 62-12-301(b), and with regard to the items described in § 4-3-1306(d).

62-12-203. A violation of this part shall be subject to civil penalties as determined appropriate by the department; provided, proper notice and hearing is given in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 3. Tennessee Code Annotated, Title 62, is amended by adding the following language as a new chapter 12, part 3:

62-12-301.

(a) This part applies to any county with a population of at least two hundred thousand (200,000), according to the 2010 federal census or any subsequent federal census.

(b)

(1) Any county not described in subsection (a) may choose to have this part apply to persons providing repossession of collateral services in the county, if the county legislative body:

(A) Adopts a resolution that clearly states that the county seeks application of this part; and

(B) Provides written notice to the department of the adoption of the resolution described in this subdivision (b)(1).

(2) Within thirty (30) days of receipt of the notice described in subdivision (b)(1)(B) and before posting on its web site pursuant to subsection (c), the department shall send electronic notice to the e-mail addresses of all recovery agencies registered in the applicable county; provided, failure to provide electronic notice under this subdivision (b)(2) by the department shall not relieve any recovery agency of the requirements of this part.

(c)

(1) The department shall provide on its web site a list of all counties in which this part applies and the date of application of this part in each of the listed counties as determined by subsection (a) or subdivision (c)(2).

(2) For any county adopting a resolution pursuant to subsection (b), this part applies thirty (30) calendar days following the department adding the county to the list on its web site.

62-12-302.

(a)

(1) On or after January 1, 2016, no person shall provide repossession of collateral services in counties to which this part applies unless the person is licensed as a recovery agency or recovery agent with the department.

(2) Subject to § 62-12-105, a recovery agency or recovery agent license authorizes the licensee to provide repossession of collateral services in all counties to which this part applies.

(b) All recovery agency or recovery agent licenses expire two (2) years from the date of licensure or renewal of licensure.

(c) The commissioner shall establish fees necessary to administer this part, including, but not limited to, fees for licensure; renewal of licensure; duplicate issuance of licensure; and changes in agency location, branch office, and remote storage location addresses.

(d) All fees collected under this part are nonrefundable and shall be deposited into the collateral recovery administrative fund created in § 62-12-104.

(e) Except as authorized under § 62-12-308, no license shall be transferred to any other person.

62-12-303.

(a) An application for licensure or renewal of licensure as a recovery agency shall include, at a minimum:

(1) The name under which the recovery agency will operate;

(2) The address of each agency location, branch office, and remote storage location operated by the recovery agency;

(3) A sworn statement that no responsible party or recovery manager for the recovery agency has been convicted in any jurisdiction of any felony;

provided, that if at least ten (10) years have passed from the time of discharge from any sentence, including probation, imposed for the felony or the felony conviction has been expunged, then the recovery agency may employ the responsible party or recovery manager;

(4) A sworn statement that no responsible party or recovery manager for the recovery agency has been convicted in any jurisdiction of any misdemeanor, an element of which is dishonesty; provided, that if at least ten (10) years have passed from the time of discharge from any sentence, including probation, imposed for the misdemeanor or the misdemeanor conviction has been expunged, then the recovery agency may employ the responsible party or recovery manager;

(5) The name of the recovery agency's recovery manager; and

(6) Proof of insurance as required under § 62-12-306.

(b) An application for licensure or renewal of licensure as a recovery agent shall include, at a minimum:

(1) The name of the recovery agent;

(2) The address of each agency location, branch office, and remote storage location where the recovery agent will be employed;

(3) A sworn statement that the recovery agent has not been convicted in any jurisdiction of any felony; provided, that if at least ten (10) years have passed from the time of discharge from any sentence, including probation, imposed for the felony or the felony conviction has been expunged, then the recovery agent may be issued a license;

(4) A sworn statement that the recovery agent has not been convicted in any jurisdiction of any misdemeanor, an element of which is dishonesty;

provided, that if at least ten (10) years have passed from the time of discharge from any sentence, including probation, imposed for the misdemeanor or the misdemeanor conviction has been expunged, then the recovery agent may be issued a license; and

(5) The name of the recovery agent's supervisor, if applicable.

(c)

(1) No recovery agency license shall be issued to any person employing a responsible party or recovery manager that has been convicted of any felony or misdemeanor described in subdivision (a)(3) or (a)(4) unless at least ten (10) years have passed from the time of the discharge from any sentence, including probation, imposed for the conviction or the conviction has been expunged.

(2) No recovery agent license shall be issued to any individual that has been convicted of any felony or misdemeanor described in subdivision (b)(3) or (b)(4) unless at least ten (10) years have passed from the time of the discharge from any sentence, including probation, imposed for the conviction or the conviction has been expunged.

62-12-304.

(a) No recovery agency shall employ any individual who engages in an actual repossession of collateral unless the individual:

(1) Is at least eighteen (18) years of age;

(2) Has successfully completed the Certified Asset Recovery Specialist (CARS) National Certification Program or another certification program approved by the department;

(3) Has not been convicted of any felony unless at least ten (10) years have passed from the time of the discharge from any sentence, including

probation, imposed for the conviction or the felony conviction has been expunged;

(4) Has not been convicted of any misdemeanor, an element of which is dishonesty, unless at least ten (10) years have passed from the time of discharge from any sentence, including probation, imposed for the conviction or the misdemeanor conviction has been expunged; and

(5) Has a valid recovery agent license.

(b) Each licensed recovery agency shall maintain a record of each recovery agent employed by the agency, accessible to law enforcement or to the department, for a period of not less than three (3) years after the recovery agent leaves employment.

The record shall contain:

(1) A photograph taken within ten (10) calendar days after the date that the recovery agent begins employment with the recovery agency; provided, the photograph is replaced with a current photograph at least every two (2) years in conjunction with the licensure renewal of the recovery agent;

(2) All correspondence or documents relating to the character and integrity of the recovery agent received by the recovery agency from any governmental source or law enforcement agency; and

(3) In the case of formerly employed recovery agents, the employee identification card that was issued to the formerly employed recovery agent under subsection (c).

(c) Each licensed recovery agency shall furnish an employee identification card, in a form as designated by the department, to each recovery agent employed by the recovery agency. The employee identification card shall contain a photograph not older than two (2) years of the recovery agent, the recovery agent's name, the recovery

agent's license number, the name and license number of the recovery agency, the recovery agent's signature, the date of issuance of the employee identification card, and the employee identification card number.

(d) No licensed recovery agency shall issue an employee identification card to any person who is not employed by the recovery agency.

(e) Each licensed recovery agency shall make all reasonable attempts to recover the employee identification card of a recovery agent when the recovery agent leaves employment with the recovery agency.

(f) Each licensed recovery agency shall immediately report an employee identification card that is lost, stolen, or not recovered from a former employee to the local law enforcement agency having jurisdiction over the recovery agency's agency location.

(g) When performing repossession of collateral services, a licensed recovery agent shall inform any individual present during the provision of the services of the agent's authority to conduct the repossession of collateral services and shall exhibit the recovery agent's employee identification card upon request.

62-12-305.

(a) A licensed recovery agency shall notify the department of any agency location, branch office, or remote storage location prior to operating the location or office on the initial license application, licensure renewal, or other form designated by the commissioner.

(b) Each branch office or agency location shall maintain a secured storage location.

62-12-306.

(a) Each licensed recovery agency shall obtain and maintain at all times insurance coverage written by an insurance company that is authorized to provide insurance coverage in this state pursuant to title 56.

(b) Coverage shall:

(1) Provide for a combined single limit policy in the amount of at least one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate; and

(2) Include commercial general liability for wrongful repossession, garagekeepers, on-hook towing, and drive-away as a direct primary policy.

(c) Coverage shall provide for a dishonesty bond policy in the amount of at least one million dollars (\$1,000,000).

(d) Coverage shall insure for the liability of all recovery agents who perform repossession of collateral services in the course of employment.

(e) The insurance company and the recovery agency shall provide notification to the department, immediately upon cancellation of the insurance policy, of whether the cancellation was initiated by the insurance company or the insured recovery agency.

(f) The recovery agency's license shall automatically be suspended on the date of cancellation of the policy unless new evidence of insurance is provided to the department prior to the effective date of cancellation.

62-12-307.

(a) It is a violation of this part:

(1) For any person to provide or engage in repossession of collateral services in any county to which this part applies without obtaining licensure with the department as required by this part;

(2) For any person to provide false documentation to the department;

(3) For a licensed recovery agency to fail to adequately supervise any recovery agent performing repossession of collateral services;

(4) For a licensed recovery agency to employ any recovery agent who does not comply with this part;

(5) For a licensed recovery agency to fail to maintain a secured storage location at any agency location or branch office;

(6) For a licensed recovery agency to fail to maintain insurance as provided in § 62-12-306; or

(7) For any person to otherwise violate this part.

(b)

(1) Upon a violation of this part, and after providing notice and a hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the department shall revoke the license of the person and may assess a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for each separate violation of this part.

(2) A vehicle used to conduct repossession of collateral services in violation of this part may be seized and forfeited in accordance with the procedure set out in title 40, chapter 33, part 2, with the department acting as the applicable agency.

(c) The department shall establish a schedule designating the civil penalties that may be assessed under this section. In assessing civil penalties, the following factors may be considered:

(1) The circumstances leading to the violation;

(2) The severity of the violation and the risk of harm to the public;

(3) The economic benefits gained as a result of noncompliance; and

(4) The interest of the public.

(d)

(1) Civil penalties assessed pursuant to this section are final thirty (30) days after the date that a final order of assessment is served. Payment of any civil penalty assessed after a hearing held pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, is a prerequisite to the issuance, renewal, or reinstatement of any license issued by the department unless:

(A) The final decision of the department is stayed pursuant to § 4-5-322(c); or

(B) Acceptable arrangements for payment of the civil penalty are made with the department prior to the issuance, renewal, or reinstatement of the license.

(2) If the person fails to pay an assessment when it becomes final, the department may apply to the appropriate court for a judgment and seek execution of the judgment.

(3) Jurisdiction for recovery of civil penalties shall be in the chancery court of Davidson County or the chancery court of the county in which all or part of the violation occurred.

(e) All civil penalties recovered pursuant to this section shall be paid into the collateral recovery administrative fund created by § 62-12-104.

62-12-308.

(a) Upon the death of a person who is licensed individually as a recovery agency, a member of the deceased's immediate family is entitled to continue operating the recovery agency under the same license for up to one hundred twenty (120) days following the date of death; provided, the department receives written notice within thirty

(30) days following the date of death. At the end of the one-hundred-twenty-day period, the license shall automatically be revoked.

(b) Upon the death of a partner or a disassociation of a partnership licensed as a recovery agency, the company shall notify the department, in writing, within thirty (30) days from the death of the partner or disassociation of the partnership. If the company fails to notify the department within the thirty-day period, then the license shall automatically be revoked. If proper notice is given, then the license shall remain in force for ninety (90) days following the date of death of the partner or disassociation of the partnership. At the end of the ninety-day period, the license shall automatically be revoked.

62-12-309. Any person that has permitted a license issued under this part to expire may renew that license within six (6) months of the expiration by payment of a renewal fee plus a late fee to be set by the department. After the six-month period, the person shall file a new application for licensure.

62-12-310. A recovery agency's license, and any employed recovery agent's license, shall be conspicuously displayed at each agency location, branch office, and remote storage location at all times.

62-12-311. This part shall not apply to the following persons:

- (1) An attorney at law who is performing duties as an attorney at law;
- (2) The lienholder or an employee of the lienholder;
- (3) An officer or employee of the United States, this state, or a political subdivision of this state while the officer or employee is engaged in the performance of official duties;
- (4) An employee, not required to be licensed under this part, performing services for, or on behalf of, a registered recovery agency;

(5) A collection agency licensed under the Tennessee Collection Service Act, compiled in chapter 20 of this title, if the agency's activities are limited to assisting an owner in the recovery of property that is not collateral;

(6) A contract security company, security guard, or any other person licensed under the Private Protective Services Licensing and Regulatory Act, compiled in chapter 35 of this title, if the company or person's activities are limited to those described under that act;

(7) An investigations company, private investigator, or any other person licensed under the Private Investigators Licensing and Regulatory Act, compiled in chapter 26, part 2 of this title, when the company or person's activities are limited to those described under that act;

(8) A motor vehicle dealer or automobile auction licensed under title 55, chapter 17, or any employee or third party acting on behalf of the dealer or auction;

(9) A financial institution or the employee of a financial institution when engaged in an activity otherwise covered by this chapter if the activity is conducted by the employee on behalf of the financial institution; or

(10) A towing company or towing operator when an employee or agent of the creditor financial institution or other lienholder is present at the site from which the collateral is towed.

SECTION 4. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act shall be severable.

SECTION 5. For purposes of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2015, the public welfare requiring it.